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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
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11 Michael Katz-Lacabe and Dr. Jennifer  
12 Golbeck, on behalf of themselves and all  
13 others similarly situated,

14 Plaintiffs,

15 vs.

16 ORACLE AMERICA, INC., a corporation  
17 organized under the laws of the State of  
18 Delaware,

19 Defendant.

Case No. 3:22-cv-04792-RS

**ORDER GRANTING PLAINTIFFS' MOTION  
FOR ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES, AND  
PLAINTIFF SERVICE AWARDS**

20 Plaintiffs have filed a motion for attorneys' fees, reimbursement of expenses, and plaintiff  
21 service awards. Dkt. 136. The fairness hearing was held on November 14, 2024. Based on the  
22 moving papers, information provided at the hearing, the relevant objections, and the record in this  
23 matter, the motion for attorneys' fees, reimbursement of expenses, and plaintiff service awards is  
24 **GRANTED.**

25 **I. BACKGROUND**

26 Plaintiffs in this action assert that Oracle's data brokering business violates internet users'  
27 right to privacy under the California Constitution as well as various state and federal privacy  
28 statutes. Plaintiffs allege Oracle's covert collection and aggregation of Plaintiffs' personal data

1 effected comprehensive surveillance of Plaintiffs’ personal lives, abrogating their privacy and  
2 autonomy.

3 This suit was the product of extensive pre-litigation investigation. Prior to bringing suit,  
4 Class Counsel worked for two years, investigating Oracle’s practices and potential legal claims to  
5 protect the Class’s privacy rights. *See* Dkt. 136 at 10–11. As part of this investigation, Class  
6 Counsel consulted privacy and forensic experts and worked with the prospective Plaintiffs to  
7 retrieve and analyze their “Offline Access Request Response Reports” (“OARRRs”), among  
8 other efforts. *Id.*

9 On August 19, 2022, Plaintiffs filed suit against Oracle asserting that its business violates  
10 internet users’ right to privacy under the California Constitution as well as various state and  
11 federal privacy statutes. Dkt. 1. Oracle initiated three rounds of motions to dismiss that raised  
12 potentially dispositive issues including Plaintiffs’ standing, the reasonable expectation of privacy,  
13 choice of law, and applicability of state and federal wiretapping statutes to Oracle’s interception  
14 of Plaintiffs’ data. *See* Dkts. 23, 63, 88. Plaintiffs opposed, and in response to the Court’s rulings,  
15 amended the complaint twice. Dkts. 72, 87. Following the Court’s dismissal with prejudice of  
16 their Electronic Communications Privacy Act (“ECPA”) claim, Plaintiffs filed a motion under 28  
17 U.S.C § 1292(b), which Oracle opposed. Dkts. 120, 122

18 Meanwhile, the Parties conducted extensive discovery. Oracle ultimately produced over  
19 160,000 pages of documents and ESI, in addition to over 283 video files, spanning approximately  
20 173 hours, of internal discussions regarding the technical operation of Oracle’s collection and use  
21 of data. Dkt. 136 at 11–12. Plaintiffs retained consulting experts to help conduct an accurate  
22 analysis of highly technical information and lines of computer code. *Id.* at 12. Through this  
23 discovery, Plaintiffs obtained information about Oracle’s business practices and policies, strategic  
24 decisions, agreements, clients, the extent of data Oracle had received, and the inferred data  
25 resulting from its data processing. *Id.*

26 Class Counsel prevailed on several issues. Plaintiffs overcame Oracle’s challenge to  
27 standing, establishing that Plaintiffs had adequately pled harm, causation, and redressability. Dkt.  
28 49 at 10. Plaintiffs also defended numerous causes of action that preserved avenues to redress,

1 including claims under the California Invasion of Privacy Act (CIPA) and the Florida Security of  
 2 Communications Act (FSCA), as well as claims for unjust enrichment under both California and  
 3 Florida law, and claims for declaratory and injunctive relief, in addition to Plaintiffs' core claims  
 4 of intrusion upon seclusion and invasion of privacy under California law. Dkt. 77.

5 On April 24, 2024, the Parties engaged in an extended day of in-person mediation  
 6 overseen by Professor Eric D. Green and Fouad Kurdi of Resolutions, LLC. Dkt. 136 at 5–6. By  
 7 the close of the mediation session, the Parties had exchanged only draft term sheets. *Id.* During  
 8 the next two weeks, the Parties continued negotiations through emails and phone calls with the  
 9 mediators. *Id.* On May 8, 2024, they executed a binding settlement term sheet outlining the basic  
 10 terms of a settlement. *Id.* Over the next ten weeks, the Parties negotiated a long-form settlement  
 11 agreement, including the precise terms and implementation of non-monetary relief. *Id.* These  
 12 arm's length negotiations resulted in the Settlement Agreement, which was executed on July 8,  
 13 2024. *Id.*; Dkt. 132-1.

14 The Parties reached a Settlement that provides monetary and non-monetary relief to the  
 15 Class. Under the Settlement Agreement, Oracle will pay \$115 million to create a non-  
 16 reversionary cash Settlement Fund for the benefit of Settlement Class Members. Dkt. 132-2,  
 17 Settlement Agreement ("SA") ¶¶ H, O, W, 3.2.5, 3.2.15. No portion of the Settlement Fund will  
 18 revert to Oracle. *Id.* ¶¶ T, 3.2.1.

19 Additionally, Oracle must implement meaningful business practices designed to address  
 20 the alleged privacy violations and protect Plaintiffs' privacy moving forward. There are two  
 21 aspects of this non-monetary relief. One, Oracle has agreed that it will not capture (a) user-  
 22 generated electronic information within referrer URLs (*i.e.*, the URL of the previously-visited  
 23 page) associated with a website user or (b) any text entered by a user in an online web form other  
 24 than through Oracle's own websites. As such, Oracle has agreed it will not engage in the alleged  
 25 conduct which is central to Plaintiffs' wiretap claims. *Id.* ¶ 3.5. Oracle has agreed to comply with  
 26 these provisions for as long as it offers the products and services described in the SAC. *Id.*

27 Soon after reaching this Settlement, Oracle announced it would shut down its ad tech  
 28 business unit, ceasing virtually all of the conduct that is at issue in this case, and will

1 automatically delete its customers' data. Dkt. 136 at 7.

2 On July 18, 2024, Plaintiffs sought preliminary approval of the Settlement, which was  
3 granted. Dkts. 132, 135. Specifically, the Court (1) preliminarily approved the Settlement  
4 Agreement, (2) provisionally certified the Settlement Class, (3) approved the Notice Plan, and (4)  
5 appointed Settlement Class Counsel, Settlement Class Representatives, and Angeion as the  
6 Settlement Administrator. Dkt. 135. Since then, Class Counsel worked closely with Angeion to  
7 supervise its implementation of the Settlement's notice program and claims administration, which  
8 is now complete. Declaration of David T. Rudolph in Support of Final Approval ("Rudolph  
9 Decl.") ¶ 3.

10 Plaintiffs now move for an order approving the requested attorneys' fees, reimbursement  
11 of expenses, and plaintiff service awards. Dkt. 136.

## 12 **II. ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**

13 Plaintiffs move for (1) \$28.75 million in attorneys' fees, representing 25 percent of the  
14 Settlement Fund; (2) reimbursement of \$211,350.52 in litigation costs incurred by Class Counsel;  
15 and (3) service awards of \$10,000 to each Class Representative. *See* Dkt. 136 at 1–2. Each  
16 request is addressed in turn.

### 17 **A. Attorneys' Fees**

#### 18 **1. Legal Standard**

19 Awards of attorneys' fees in class action cases are governed by Federal Rule of Civil  
20 Procedure 23(h), which provides that, after a class has been certified, the court may award  
21 reasonable attorneys' fees and nontaxable costs. A court "must carefully assess" the  
22 reasonableness of the fee award. *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003).

23 Where litigation leads to the creation of a common fund, courts can determine the  
24 reasonableness of a request for attorneys' fees using either the common fund method or the  
25 lodestar method. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 944–45. Class  
26 Counsel's fee request is analyzed under both theories, starting with the percentage-of-the-  
27 common-fund theory, and then a lodestar-cross-check.

## 2. Discussion

Under the percentage method, courts “typically calculate 25% of the fund as the ‘benchmark’ for a reasonable fee award, providing adequate explanation in the record of any ‘special circumstances’ justifying a departure.” *In re Bluetooth Headset Prods.*, 654 F.3d at 942 (citations omitted). Here, Class Counsel requests that the court approve a fee award of \$28.75 million, or 25 percent of the gross Settlement amount. Dkt. 136 at 1. This request is evaluated in light of the factors set forth in *Vizcaino* and will undergo a cross-check as to the reasonableness of the award using the lodestar method. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002).

### a. Percentage-of-the-Common Fund Method

The selection of a percentage must “take into account all of the circumstances of the case.” *Vizcaino*, 290 F.3d at 1048. When assessing the reasonableness of a fee award under the common fund theory, courts consider factors such as (1) the results achieved, (2) the risk of litigation, (3) the complexity of the case and skill required, (4) the contingent nature of the litigation, and (5) awards made in similar cases. *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008); *Vizcaino*, 290 F.3d at 1048–50.

#### 1. Results Achieved

“The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1046. On monetary relief, Class Counsel secured the third largest common fund of any non-data breach privacy settlement, and the highest common fund amount of any privacy case where no direct relationship exists between defendant and the class. *See* Dkt. 132-1 (surveying fifteen comparable non-data breach privacy class action settlements); Dkt. 132 at 19 (Plaintiffs are aware of only two non-data breach privacy class action settlements larger than this one, both of which involved Facebook). The \$115 million Settlement Fund will enable the distribution of approximately \$25 in compensation to every valid claimant. This is significant compensatory relief, given that Class Members had no out-of-pocket damages.

The Settlement also achieves non-monetary relief. *See* SA ¶ 3.5. Additionally, shortly

after the Parties reached an agreement in principle for this non-monetary relief, Oracle publicly announced the imminent shutdown of its ad tech business at issue in this litigation. Oracle's ad tech closure will dispose of the business units responsible for virtually all of the conduct at issue in this case. The Settlement ensures that if Oracle returns to this area of commerce, its practices will be subject to the injunctive relief standards. The parties dispute whether the Settlement was likely a contributing factor to this development. Class Counsel did not attempt to quantify the value of the non-monetary relief that it obtained or contributed to; however, these non-monetary remedies factor into the fee analysis calculus and underscore the reasonableness of the fee request. *See In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at \*11 (N.D. Cal. Aug. 17, 2018).

## 2. Risk of Litigation

"Data privacy law is a relatively undeveloped and technically complex body of law, which creates uncertainty and, therefore, additional risk for Class Counsel." *See In re TikTok, Inc., Consumer Priv. Litig.*, 617 F. Supp. 3d 904, 941 (N.D. Ill. 2022), *appeal dismissed sub nom. In re Tiktok Inc., Consumer Priv. Litig.*, No. 22-2682, 2022 WL 19079999 (7th Cir. Oct. 12, 2022)). The novelty and scope of Plaintiffs' privacy allegations made this a particularly risky case to litigate. Unlike many class actions, this case did not evolve from revelations in the press about mishandling of data, investigations and fines by regulators, or a groundswell of public opinion against clearly offensive and illegal practices. Rather, Class Counsel independently investigated, documented, and innovatively challenged the underlying business model of one of the largest corporations in the world.

This factor weighs in favor of Class Counsel's requested 25 percent fee, given the substantial risks borne by Class Counsel in pursuing this novel class action.

## 3. Complexity of the Case and Skill Required

Also considered are the skill required to prosecute and manage this litigation, as well as Class Counsel's overall performance. *See In re Omnivision Techs.*, 559 F. Supp. 2d at 1047. During the past two years, Class Counsel's work on behalf of the Class involved, among other things: (a) discovering the alleged misconduct and investigating Oracle's collection and

1 aggregation of data for two-years prior to filing; (b) developing novel legal theories and  
 2 identifying viable claims to support them; (c) conducting legal research in opposition to Oracle's  
 3 three motions to dismiss and successfully preserving numerous important causes of action; (d)  
 4 successfully sealing portions of Plaintiffs' "Offline Access Request Response Reports"  
 5 ("OARRRs") (the report Oracle provides concerning aspects of the personal data it stores) after  
 6 three rounds of motions; (e) obtaining valuable discovery from Oracle; (f) securing a favorable  
 7 settlement following months of arm's length negotiations; and (g) fulfilling Class Counsel's  
 8 responsibilities under the Settlement Agreement, including seeking preliminary approval of the  
 9 Settlement and overseeing Notice administration. Class Counsel brought experience in complex  
 10 class action litigation and extensive subject matter knowledge to identify the privacy invasions at  
 11 issue, litigate novel and untested legal theories, and negotiate a settlement that provides  
 12 appropriate redress and protects the Settlement Class's privacy rights moving forward.

13 The skill displayed by Class Counsel in prosecuting this case and obtaining a favorable  
 14 settlement supports the requested award.

#### 15 **4. Contingent Nature of the Litigation**

16 The risk of non-payment assumed by Class Counsel is a factor in determining counsel's  
 17 appropriate fee award. *See Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL  
 18 496358, at \*3 (N.D. Cal. Feb. 6, 2013) (finding higher fee award justified where the "case was  
 19 conducted on an entirely contingent fee basis against a well-represented Defendant"). Class  
 20 Counsel assumed substantial risk by prosecuting this case on a purely contingent basis and  
 21 advancing all necessary expenses. Here, the risk of nonpayment was magnified because Class  
 22 Counsel assumed the unusual risk of litigating without co-counsel. The fact that no "copycat"  
 23 suits were filed could indicate that other firms viewed this case as too risky to prosecute.

24 Given the substantial risks borne by Class Counsel in pursuing this class action, this factor  
 25 weighs in favor of the requested fee.

#### 26 **5. Awards Made in Similar Cases**

27 A court should also consider fee awards from similar cases. *Vizcaino*, 290 F.3d at 1049–  
 28 50. The requested 25 percent fee award is in line with the range of awards in this Circuit. *See In*



1 *re Anthem, Inc. Data Breach* Litigation, 2018 WL 3960068, at \*2, \*5, \*11 (awarding 27% of  
 2 \$115 million settlement, which included non-monetary relief “aimed at combatting the precise  
 3 harm” at issue, after three years of litigation); *In re Apple Device*, 2023 WL 2090981, at \*13–14  
 4 (awarding 26% of \$310 million settlement after three years of litigation at the pleading stages,  
 5 resulting in estimated payments to claimants of roughly \$25 per device); *In re Zoom Video*  
 6 *Commc’ns, Inc. Priv. Litig.*, No. 20-cv-02155-LB, 2022 WL 1593389, at \*11 (N.D. Cal. Apr. 21,  
 7 2022), *appeal dismissed sub nom. Brice v. Rodgers*, No. 22-15764, 2023 WL 3568176 (9th Cir.  
 8 Jan. 5, 2023) and *Brice v. Gonzalez*, No. 23-15103, 2023 WL 3090669 (9th Cir. Mar. 31, 2023)  
 9 (awarding 25% of \$85 million settlement, resulting in a 3.28 multiplier, where, after two years of  
 10 litigation, counsel obtained “excellent benefits for the class, both monetary and injunctive (in an  
 11 area of law in which purely injunctive relief is common), and there were significant risks  
 12 involved with the litigation”); *In re Lidoderm*, 2018 WL 4620695, at \*1 (awarding 33% of \$105  
 13 million after four years of risky litigation); *In re TikTok*, 617 F. Supp. 3d at 942 (awarding 33% of  
 14 \$92 million settlement after three years of litigation, recognizing that “[t]he need to provide  
 15 financial incentives for zealous and effective representation of consumers in legally and  
 16 technologically complex data privacy cases such as this—especially in the age of pervasive social  
 17 media—weighs in favor of granting the request”). The Ninth Circuit has not adopted a sliding-  
 18 scale rule regarding the size of a settlement fund in relation to the percentage of attorneys’ fees  
 19 that may be awarded. *In re Optical Disk Drive Prod. Antitrust Litig.*, 959 F.3d at 933.

20 Accordingly, awards in similar cases support the requested 25 percent fee.

21 **b. Lodestar Cross-Check**

22 “[A] [lodestar] cross-check is not required so long as the court achieves a reasonable  
 23 result using the method it selects.” *Senne v. Kansas City Royals Baseball Corp.*, No. 14-cv-00608  
 24 JCS, 2023 WL 2699972, at \*18 (N.D. Cal. Mar. 29, 2023), *aff’d sub nom. Senne v. Concepcion*,  
 25 No. 23-15632, 2023 WL 4824938 (9th Cir. June 28, 2023) (citations omitted). Nonetheless, a  
 26 lodestar crosscheck here further supports Class Counsel’s fee request. Class Counsel’s billing  
 27 summary complies with this District’s guidelines for class action attorneys’ fee requests and  
 28 contains sufficient detail for the Court to conduct a lodestar-based assessment. The summary



shows that Class Counsel’s lodestar for work on this case through August 8, 2024 (the day before the Court preliminarily approved the Settlement) is \$9,866,699.50, representing 13,100.30 hours of attorney and law firm staff time. By staffing this case entirely in-house, Class Counsel was incentivized to expend its resources as efficiently as possible. The time Class Counsel dedicated to prosecuting this action is reasonable. Class Counsel’s hourly rates are in line with those prevailing in this District for similar services by lawyers of reasonably comparable skill, experience, and reputation. *See Grey Fox, LLC v. Plains All-Am. Pipeline, L.P.*, No. CV 16-03157 PSG (JEMx), 2024 WL 4267431, at \*5 (C.D. Cal. Sept. 17, 2024) (approving Class Counsel’s 2024 rates).

Class Counsel’s fee request results is an acceptable multiplier of Class Counsel’s lodestar. The benchmark 25 percent fee requested by Class Counsel reflects a multiplier of 2.91 of Class Counsel’s lodestar, which “falls within the Ninth Circuit’s presumptively acceptable range” of multipliers routinely approved in the Ninth Circuit and elsewhere, and will only decrease as Class Counsel continues to fulfill its responsibilities to the Class. *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (citing *Vizcaino*, 290 F.3d at 1051 & n.6). Thus, application of the lodestar multiplier cross-check confirms the reasonableness of Class Counsel’s requested fee.

### **c. Objections to Fees**

Four Objectors objected to Class Counsel’s fee request. *See* Dkt. Nos. 137 and 148 (same objector), 140, 152, 157, and 172. Oracle filed a comment to the Fee Motion, but expressed no position. Dkt. 138. None of these responses warrants denial or modification of counsel’s requested fees. The Objections lack appreciation for the jurisprudence that governs the economics of representative actions, which allow for the vindication of aggregated interests that would otherwise go unaddressed. The fee request is supported by well-established Ninth Circuit principles.

The requested fee award is reasonable and Class Counsel is GRANTED \$28,750,000 in attorneys’ fees.

### **B. Litigation Expenses**

In class action settlements, “[a]ttorneys may recover their reasonable expenses that would

typically be billed to paying clients in non-contingency matters.” *See In re Omnivision Techs.*, 559 F. Supp. 2d at 1048.

Here, Class Counsel is entitled to reimbursement of reasonable out-of-pocket costs advanced for the Class. *See* Fed. R. Civ. P. 23(h); 18 U.S.C. § 2520(b)(3); *Paul, Johnson*, 886 F.2d at 271. The expenses Class Counsel incurred in this litigation were reasonable and necessary to represent the Class competently.

To the extent that Dkt. 172 objects to the reimbursement of Class Counsel’s litigation expenses, the Objection omits any sound reasoning for doing so. Therefore, it is overruled for lack of merit.

Accordingly, Plaintiffs’ request for reimbursement of \$211,350.52 in litigation expenses is GRANTED.

### **C. Service Awards for Plaintiffs**

Service awards are “intended to compensate class representatives for work undertaken on behalf of a class” and “are fairly typical in class action cases.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (cleaned up). Courts have discretion to approve service awards based on the amount of time and effort spent, the duration of the litigation, and the personal benefit (or lack thereof) as a result of the litigation. *See Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

The requested service awards for the two Settlement Class Representatives are reasonable and appropriate. Both Class Representatives expended considerable time and effort to assist in the investigation and litigation of this case. They each (a) obtained their OARRRs from Oracle and, despite privacy concerns, agreed to attach them to the complaint; (b) met with Class Counsel to discuss the facts surrounding Oracle’s collection and aggregation of their personal data; (c) reviewed and approved the allegations in complaints and participated in extensive discovery; (d) turned over the contents of their personal devices to a neutral forensic expert to be searched, imaged, and produced to Oracle; (e) submitted highly personal declarations in support of sealing portions of their OARRRs; (f) kept in close contact with counsel to actively monitor the progress of the litigation; and (g) reviewed and approved the Settlement Agreement. Absent the Class

Representatives' willingness to undertake the burdens and risks associated with filing and prosecuting this lawsuit, no recovery would have been possible. Because of their efforts, Oracle has committed to pay a total of \$115,000,000 and agreed to implement meaningful non-monetary relief. The Court finds that the amount requested for service awards compares favorably to the size of the settlement fund.

One Objection argues that the two Settlement Class Representatives should not be awarded Service Awards in the amount of \$10,000 "when the amount they recovered for the Class is less than 50 cents per Class Member." Dkt. 150 at 9–10. This objector does not cite a single case in support of her objection. Service Awards are generally awarded based on the Class Representatives' time and efforts in furtherance of the litigation and are found reasonable when they amount to a low percentage of the common fund, as these do. *See* Dkt. 136 § III (total requested Service Awards amount to 0.17 percent of the Settlement Fund). Accordingly, this Objection is overruled.

Therefore, the requested service awards are reasonable and the award of \$10,000 to each of the two Class Representatives, for a total of \$20,000, is GRANTED.

### **III. CONCLUSION**

For the reasons stated above, Plaintiffs' motion for attorneys' fees, reimbursement of expenses, and service awards is GRANTED. Accordingly, it is HEREBY ORDERED AS FOLLOWS:

1. Class Counsel is awarded 25 percent of the total Settlement Fund, or \$28.75 million, in attorneys' fees and \$211,350.52 in expenses.
2. Each of the two Settlement Class Representatives is awarded \$10,000 in service awards.
3. These amounts are warranted and reasonable for the reasons set forth in the moving papers, at the Fairness Hearing, and the reasons stated in this Order.

IT IS SO ORDERED.

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2 Dated: November 15, 2024  
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Hon. Richard Seeborg  
Chief United States District Judge